

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CASE NO.: 1:21-CV-00067

DMARCIAN, INC.,

Plaintiff,

v.

DMARC ADVISOR BV,  
f/k/a dmarcian Europe BV,

Defendant.

**PLAINTIFF'S OBJECTIONS AND  
COUNTER-DESIGNATIONS**

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Plaintiff dmarcian, Inc. submits the following objections and counter-designations in response to Defendant's Deposition Designations (Doc. 421).

Deposition	Begin	End	Counter-designations: FRCP 32(a)(6)	Objection/Basis
Timothy Draegen as dmarcian, Inc.'s Rule 30(b)(6) designee (Nov. 27, 2023)	5:10	6:3		
	14:23	16:5		
	36:3	39:24		No initial objection, but reserved as it relates to 2012 code reproduction
	14:23	14:25		Duplicate Excerpt - unnecessary
	33:6	34:07		
	38:7	38:23		Duplicate Excerpt - unnecessary
	46:21	48:17		
	90:14	96:16	87:11 to 90:7 – context of agreement, completeness <sup>1</sup>	
	104:6	104:20	104:21 to 105:4 – context of agreement	

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<sup>1</sup> "Should one party seek to introduce only part of a witness's deposition, the Rules provide 'an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.'" *Saget v. Trump*, 351 F. Supp. 3d 251, 254 (E.D.N.Y. 2019) (quoting Fed. R. Civ. P. 32(a)(6)). The purpose of Rule 32(a)(6) "is to ensure completeness of the record." *City of Wilmington, Delaware v. United States*, 153 Fed. Cl. 405, 408 (Fed. Cl. 2021). Thus, counter-designations that "provide necessary context... should be admitted into the record." *Id.*

<b>Deposition</b>	<b>Begin</b>	<b>End</b>	<b>Counter-designations: FRCP 32(a)(6)</b>	<b>Objection/Basis</b>
	105:5	105:9	105:10 to 13 (same)	
	108:2	108:20		If introduction of Exhibit 11 <sup>2</sup> contemplated by this excerpt, Plaintiff objects; the exhibit is only used to flag the excerpt's focused time frame
	109:03	109:14		
	117:9	117:16	117:17 to 19 – context/completeness	
	111:22	113:8		
	113:21	114:8	114:20 to 25 – context for this and previous excerpt	
	122:18	123:13	123:19 to 24 - completeness	
	137:11	139:11		Reserve objections to Ex. 14 (which includes notes dmarcian did not add to the document); by not objecting to use of excerpt in and of itself dmarcian does not waive any arguments as to the admissibility of the exhibit referenced, and if it is not

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<sup>2</sup> Wherever testimony Defendant cites for any of the transcripts referenced herein involves, surrounds or is based on a deposition exhibit, then, regardless of whether Plaintiff lodges a specific objection to the excerpt based on that exhibit, all such designations are subject to such objection, whether or not lodged, and argument is deferred until discussion of specific trial exhibits between the parties occurs,

Deposition	Begin	End	Counter-designations: FRCP 32(a)(6)	Objection/Basis
				admitted, the excerpt may be excluded from evidence
	139:12	140:15		Continuous excerpt from previous one – reservation objection noted above incorporated herein as well
	147:24	149:16		Objection insofar as the Exhibit 15 this excerpt refers to may not be admissible (issue reserved), which would make this excerpt useless and should be stricken in that event.
	187:04	188:3	188:4 to 7 – complete the answer	
	233:12	235:4	232:13 to 233:11 - completeness	
	239:12	239:25	132:15 to 133:8; 135:1 to 3; 136:10 to 137:7– completeness re: reasons why dBV paid Belean	

Deposition	Begin	End	Counter-designations: FRCP 32(a)(6)	Objection/Basis
<b>Timothy Draegen as dmarcian, Inc.'s Rule 30(b)(6) designee (Nov. 28, 2023)</b>	251:24	256:12		Objection; referenced Exhibit 23 is subject to attorney-client/common interest privilege so testimony and exhibit are inadmissible under FRE 501 and FRE 403
	272:25	288:12	317:1 to 8	Objection to 272:25 to 280:22, and 288:2 to 12 – Swenberg dispute, FRE 403, MIL precluding reference to Swenberg matters; also privilege as per previous excerpt as respects Exhibit 23 applies to the document that the testimony is based on so testimony to be precluded
	303:06	305:03		
	312:25	313:25	310:22 to 312:3 and 327:13-15– completeness and context	
	314:9	315:13	315:14 to 316:8 – for this and the next excerpt (316:9 to 316:11) – completeness and context re: periodic times when TD worked on code	
	316:09	316:11	same	
	320:07	320:14	320:15 to 322:14 – completeness, context and accuracy	

<b>Deposition</b>	<b>Begin</b>	<b>End</b>	<b>Counter-designations: FRCP 32(a)(6)</b>	<b>Objection/Basis</b>
	328:02	329:18	327:13 to 328:1 – completeness and completion of Q&A	
Timothy Draegen (Nov. 28, 2023)	23:02	25:21		Objection; excerpt references copyright application which is the subject of an MIL
	29:08	31:17	If objection overruled, add 29:5 to 7, 31:18 to 32:21 – completeness and context;	Objection; excerpt references copyright application which is the subject of an MIL
	37:04	39:14		Objection; excerpt references copyright application which is the subject of an MIL
Timothy Draegen (Nov. 28, 2023) (continued)	25:22	27:24		Objection; excerpt references copyright application which is the subject of an MIL
	28:20	29:4	29:5 to 7 – completeness and context	
	32:22	33:08		Objection; excerpt references copyright application which is the subject of an MIL
	40:18	43:12		Objection; excerpt references copyright application which is the subject of an MIL
	46:11	47:09	46:8 to 10 – added the question as the designation included the answer without the question	

<b>Deposition</b>	<b>Begin</b>	<b>End</b>	<b>Counter-designations: FRCP 32(a)(6)</b>	<b>Objection/Basis</b>
	66:5	66:19	Remove 66:19 line from excerpt – it is the beginning of the next question	
	74:9	78:25		
	79:16	82:01	82:2 to 16, 83:11 to 84:17 – completeness and context	
	89:10	90:05	If objection overruled, add 87:18 to 89:9	Objection; isolated, unintelligible, no relevance (FRE 401 and 403)
	91:07	91:14		Shannon Draegen testified to damages as dmarcian designee; this was Tim in individual capacity so testimony not binding on that issue and excerpt may be stricken under FRE 403
	107:19	112:09		
	152:25	153:23		
	165:3	165:10	165:11 to 166:15 – excerpt cut answer off in mid answer; full answer to be included for completeness and context	
	166:16	167:18	167:19-24 - excerpt cut answer off in mid answer;	

<b>Deposition</b>	<b>Begin</b>	<b>End</b>	<b>Counter-designations: FRCP 32(a)(6)</b>	<b>Objection/Basis</b>
			full answer to be included for completeness and context	

<b>Deposition</b>	<b>Begin</b>	<b>End</b>	<b>Counter-designations: FRCP 32(a)(6)</b>	<b>Objection/Basis</b>
<b>Timothy Draegen (Dec. 5, 2023)</b>	177:22	178:2		
	197:6	197:17	197:18 to 198:6 - excerpt cut answer off in mid answer; full answer to be included for completeness and context	
	215:10	217:3		Reservation of objection as respects Ex. 43 (testimony focuses on) and excerpt; to be determined in exhibit selection and agreement process
	217:06	219:13	219:14 to 220:6 – completeness as next excerpt continues discussion on exhibit	
	220:23	222:25	Same as previous excerpt	
	226:22	228:08	226:6 to 21 – background, context and completeness	



Deposition	Begin	End	Counter-designations: FRCP 32(a)(6)	Objection/Basis
	251:19	252:4		Reserve objection on exhibit that excerpt refers to which affects use of excerpt;
	273:3	273:20	306:9 to 21	Reserve objection on exhibit that excerpt refers to which affects use of excerpt; additional excerpts on explanation of notes may be sought depending on admissibility of exhibit.
Robert Wise (Dec. 11, 2023)	4:5	4:20		<b>Plaintiff objects to the reading in of any testimony of Robert Wise pursuant to FRCP 32(a)(3) as he was not at the time of the taking of the deposition a dmarcian officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4); to the extent that dmarcian offers any counter designations, they do not apply unless the Court overrules this objection to the read in of any part of his testimony. This objection applies to all designations of Mr. Wise's testimony below.</b>
	7:24	8:1		
	15:8	15:13		
	33:21	34:4		
	34:16	39:11		Objection regarding Exhibit 2 (or portions thereof that Wise did not draft) to be

<b>Deposition</b>	<b>Begin</b>	<b>End</b>	<b>Counter-designations: FRCP 32(a)(6)</b>	<b>Objection/Basis</b>
				determined as part of exhibit list discussions
	41:14	41:25	41:6 to 13; 42:13 to 43:2 – completeness and context	
	42:1	42:5	41:6 to 13; 42:13 to 43:2 – completeness and context	
	49:19	50:9	50:10 to 14 – completeness and context	
	94:11	95:18	92:20 to 94:10; 95:19 to 96:23 – completeness and context	
	102:10	102:16	101:19 to 102:9 – completeness and context	
	103:16	103:23	103:24 to 104:14 – completeness and context	
	104:15	111:3	Same as previous excerpt	
	111:7	111:15		
	112:15	113:4		
	115:19	116:1		

<b>Deposition</b>	<b>Begin</b>	<b>End</b>	<b>Counter-designations: FRCP 32(a)(6)</b>	<b>Objection/Basis</b>
Robert Wise (Dec. 11, 2023) (continued)	116:13	117:7		
	126:13	127:13		
	127:17	128:22	128:23 to 129:17 – completeness and context	
	164:23	166:22	166:23 to 167:11 – completeness and context	Objection based on exhibit
	199:15	208:13		
	208:24	212:25	241:19 to 250:19 – completeness and context	FRE 401, 403
	213:9	214:17	241:19 to 250:19 – completeness and context	FRE 401, 403
	224:1	241:4	241:19 to 250:19 – completeness and context	FRE 401, 403
Shannon Draegen (Nov. 29, 2023)	5:7	5:21		
	7:21	7:22		
	131:12	131:20	131:21 to 132:2 - completeness	

<b>Deposition</b>	<b>Begin</b>	<b>End</b>	<b>Counter-designations: FRCP 32(a)(6)</b>	<b>Objection/Basis</b>
	133:7	135:23	135:24 to 136:3 – completeness and bridge between two excerpts for context	Objection; Witness interruption; if excerpt used, counter designation must be used as well for this and next excerpt
	136:4	136:15	See above, and also add 136:16 to 137:11, and 138:21 to 140:3 – completeness and bridge between excerpts for context	
	137:12	138:6	Same as above; 136:16 to 137:11	
	142:2	142:12	140:15 to 142:1 – completeness and context	
	143:11	147:21		Objection; relevance, prejudice, FRE 401, 403
	148:14	149:8		Objection; relevance (FRE 401) re: damages summary preparation
	151:6	151:25		Objection; relevance (FRE 401) re: damages summary preparation
	156:21	158:19		Objection to 156:22 to 157:17; FRE 401

<b>Shannon Draegen (Dec. 8, 2023)</b>	186:15	188:20	188:21 to 24 – completeness; witness finished answer in these lines; also add 277:7 to 278:25 for context	
	189:10	195:1	195:2 to 25 – completeness, and bridge between this and next selected excerpt needed for context	
	196:1	198:22	195:2 to 25 - same as above; also add 199:6 to 22 for completeness and context	
	201:10	205:12	205:11 to 15 – completeness and context; also add 207:19 to 211:6 – completeness and context	
	233:20	239:16	239:17 to 241:22 - completeness and context; also on damages: also for completeness on damages, add excerpts 179:11 to 180:19; 268:4 to 269:20; 272:10 to 273:22; 277:7 to 278:25; 282:21 to 283:11	

This the 3rd day of February, 2025.

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***CERTIFICATE OF SERVICE***

I hereby certify that the foregoing was served upon counsel for all other parties to this action listed below by efilng a copy of the same utilizing the Western District of North Carolina's efilng system:

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This the 3rd day of February, 2025.

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